SUPREME COURT, U. S.

JAN 22 1970

JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 1046

EDMOND J. HAMILTON and
JOHN L. DATENHOFF,

Appellants,

versus

JOHN J. McKEITHEN, GOVERNOR OF THE STATE OF LOUISIANA,

Appellee.

On Appeal from the Supreme Court of the State of Louisiana

SUPPLEMENTAL JURISDICTIONAL STATEMENT ON BEHALF OF EDMOND J. HAMILTON and JOHN L. DATENHOFF, APPELLANTS

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Franklin Press, Inc. Baton Rouge, La.

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SUPPLEMENTAL JURISDICTIONAL STATEMENT

The present supplemental jurisdictional statement is filed for the purpose of explaining to the Court the reasons for the

untimely docketing of this appeal on January 8, 1970, rather than on or prior to January 6, 1970, the latter date being the date upon which the ninety (90) day period provided by Rule 13(1) of this Court for the docketing of the appeal expired.

There is annexed hereto and made a part hereof as an appendix an affidavit executed by present counsel showing the circumstances under which the record, printed briefs, and check for costs were transmitted to this Court. This affidavit reveals that counsel on December 24, 1969, twelve (12) days before the expiration of the ninety (90) day period for docketing the appeal, directed a letter of transmittal to the Clerk of the Supreme Court of the United States together with a check in the amount of $100.00 for costs. This letter and check were placed in the shipping box with the certified record, consisting of two volumes, which had been received from the Louisiana Supreme Court together with one signed copy and thirty-nine (39) additional copies of the jurisdictional statement. This shipping box was securely sealed with preglued brown sealing paper and wrapped with heavy cord, and was properly addressed to the Supreme Court of the United States, Supreme Court Building, Washington, D.C. At about 4:45 P.M., on December 24, 1969, counsel left his office at 1730 Main Street, Baton Rouge, Louisiana, en route to the United States Post Office which was located some ten (10) blocks away. Counsel arrived at the Post Office shortly after the closing time. Counsel thereupon utilized the self-service mailing facilities at the Post Office, weighed the package, affixed sufficient postage, obtained a vended postal insurance record for third class mailing, and placed the box in the inside package mailing drawer in the Post Office.

Counsel on January 7, 1970, not having received any

acknowledgment from the Clerk of the United States Supreme Court, called the Jurisdictional Statement Docketing Department in the Clerk's office of the United States Supreme Court, and talked to one Mrs. Lazowski for twenty (20) minutes. Counsel was informed that the record and jurisdictional statement had not been received at the Clerk's Office, nor had the matter been docketed.

On January 8, 1970, counsel received a call from the said Mrs. Lazowski stating that the record and thirty-nine copies of the jurisdictional statement had been received in a damaged condition with a notation stamped thereon, "Damaged in the Mail." Counsel at that time requested that the case be docketed, if possible, and stated that a supplemental jurisdictional statement would be forwarded at the earliest possible date to explain the circumstances concerning the mailing of the transcript and jurisdictional statement.

This Court, in its discretion, has the right to waive the consequences of an untimely docketing. *Pittsburgh Towing Co. v. Mississippi Val. Barge Line Co.*, 385 U.S. 32, 87 S. Ct. 195 (1966). Justice Black in his dissenting opinion in this case said the following:

> "As I have previously stated, '"The filing of court papers on time is, of course, important in our court system. But lawsuits are not conducted to reward the litigant whose lawyer is most diligent or to punish the litigant whose lawyer is careless. Procedural paper requirements should never stand as a series of dangerous hazards to the achievement of justice through a fair trial on the merits."' Beaufort Concrete Co., supra, 384 U.S. at 1006, 86 S. Ct. at 1910, Black J., dissenting. The conflict between the interest of the court clerk in the timely filing

of papers and the interest of the citizen in having his lawsuit tried should be resolved in favor of the citizen, not the court clerk. I would not dismiss this case for violation of Rule 13(1)."

It is respectfully submitted that there was no lack of due diligence on the part of counsel, and that this Court, in the exercise of its sound discretion, should waive the consequences of the untimely docketing of this appeal, and that plenary consideration should be given this case to resolve the important Federal question herein presented, with briefs on the merits and oral argument, and a final decision by this Court.

Respectfully submitted,

C. Alvin Tyler,
Attorney for Edmond J. Hamilton and John L. Datenhoff
1730 Main Street
Baton Rouge, Louisiana

Of Counsel:

ROBERT E. MORGAN
Cormie & Morgan
616 Kirby Street
Lake Charles, Louisiana 70601

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, personally came and appeared, C. ALVIN TYLER, who, after being duly sworn, deposed and said:

That he is an attorney at law duly admitted to practice before the Supreme Court of the United States, and that he is attorney for Edmond J. Hamilton and John L. Datenhoff, Appellants in the matter entitled "Edmond J. Hamilton and John L. Datenhoff, Appellants versus John J. McKeithen, Governor of the State of Louisiana, Appellee," docket No. 1046, October Term, 1969 of the Supreme Court of the United States; that as attorney for said appellants affiant on December 24, 1969, twelve (12) days before the expiration of the ninety (90) day period for docketing the appeal, directed a letter of transmittal to the Clerk of the Supreme Court of the United States together with a check in the amount of $100.00 for costs; that said letter and check were placed in the shipping box with the certified record, consisting of two volumes, which had been received from the Louisiana Supreme Court together with one signed copy and thirty-nine (39) additional copies of the jurisdictional statement; that said shipping box was securely sealed with pre-glued brown sealing paper and wrapped with heavy cord, and was properly addressed to the Supreme Court of the United States, Supreme Court Building, Washington, D.C.; that at about 4:45 P.M., on December 24, 1969, affiant left his office at 1730 Main Street, Baton Rouge, Louisiana, en route to the United States Post Office which was located some ten (10) blocks away; that affiant arrived at the Post Office shortly after the closing time; affiant thereupon utilized the self-service mailing facili-

ties at the Post Office, weighed the package, affixed sufficient postage, obtained a vended postal insurance record for third class mailing, and placed the box in the inside package mailing drawer in the Post Office; that affiant on January 7, 1970, not having received any acknowledgment from the Clerk of the United States Supreme Court, called the Jurisdictional Statement Docketing Department in the Clerk's Office of the United States Supreme Court; that affiant talked to one Mrs. Lazowski for twenty (20) minutes; that affiant was informed that the record and jurisdictional statement had not been received at the Clerk's office, nor had the matter been docketed; that on January 8, 1970, affiant received a call from the said Mrs. Lazowski stating that the record and thirty-nine copies of the jurisdictional statement had been received in a damaged condition with a notation stamped thereon, "Damaged in the Mail"; that affiant at that time requested that the case be docketed, if possible, and stated that a supplemental jurisdictional statement would be forwarded at the earliest possible date to explain the circumstances concerning the mailing of the transcript and jurisdictional statement.

C. Alvin Tyler

SWORN TO AND SUBSCRIBED before me, on this

day of _____, 1970.

Notary Public

PROOF OF SERVICE

I, C. ALVIN TYLER, one of the attorneys for EDMOND J. HAMILTON and JOHN L. DATENHOFF, appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the _____ day of _____, 1970, I served copies of the foregoing Supplemental Jurisdictional Statement on the several parties to this appeal, by mailing copies in duly addressed envelopes, with first class postage prepaid, as follows:

To: Jack P. F. Gremillion, Attorney General of the State of Louisiana, of counsel for appellant, John J. McKeithen, Governor of the State of Louisiana, State Capitol, Baton Rouge, Louisiana

To: Kenneth C. DeJean, Special Counsel, of counsel for John J. McKeithen, Governor of the State of Louisiana, Office of the Attorney General, State Capitol, Baton Rouge, Louisiana

To: Willie D. Mayor, Assistant Attorney General, of counsel for appellant, John J. McKeithen, Governor of the State of Louisiana, Office of the Attorney General, State Capitol, Baton Rouge, Louisiana

To: Sam H. Jones, G. Allen Kimball and William M. Nolen, Attorneys for appellant, John J. McKeithen, Governor of the State of Louisiana, and attorneys for intervenor-appellant, American Rice Growers Cooperative Association of Lake Charles, Louisiana, Jones, Kimball, Harper, Tete & Wetherill, Gulf Na-

tional Bank Building, P. O. Box 910, Lake Charles, Louisiana 70601

To: Everett R. Scott, Jr., attorney for intervenor-appellant, Lake Charles Maritime Association, Kaufman, Anderson, Leithead, Scott & Boudreau, 117 W. Broad Street, P. O. Box 1299, Lake Charles, Louisiana 70601

To: Thomas L. Raggio, attorney for intervenor, Greater Lake Charles Chamber of Commerce, Hall, Raggio, Farrar & Barnett, Magnolia Building, Lake Charles, Louisiana 70601

To: Thomas M. Bergstedt, attorney for intervenor, West Calcasieu Chamber of Commerce, Scotfield, Cox & Bergstedt, 126 West Kirby Street, Lake Charles, Louisiana 70161

To: Meredith T. Holt, attorney for intervenors, Jesse M. Knowles, A. C. Clemmons, Jr., Harry M. Hollins, Robert G. Jones, William L. McLeod, Jr., William S. Boyd, and Conway LeBleu, Holt and Woodley, Pioneer Building, Lake Charles, Louisiana 70601

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